

# EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - CIVIL TERM - PART 7

DONNA A. OLSON and ROBERT M. OLSON,

Plaintiff,

Index No.  
190328/2017

BRENNETAG NORTH AMERICA, INC.;

BRENNETAG SPECIALTIES, INC.

Individually, and f/k/a Mineral Pigment Solutions, Inc., as successor-in-interest to Whittaker, Clark & Daniels, Inc.,

## CYPRUS AMAX MINERALS COMPANY

Individually and as successor-in-interest to American Talc Company, Metropolitan Talc Company, Inc., Charles Mathieu, Inc., and Resource Processors, Inc.;

TMERYS TALC AMERICA, INC.

JOHNSON & JOHNSON CONSUMER, INC.;

WHITTAKER, CLARK & DANIELS, INC.,

Individually and as successor-in-interest  
To American Talc Company, Metropolitan Talc  
Company, Inc., Charles Mathieu, Inc., and  
Resource Processors, Inc.;

## Defendants

60 Centre Street  
New York, New York  
May 13, 2019

## B E F O R E :

HONORABLE GERALD LEBOVITZ,  
Justice; and a jury

(Appearances on following page)

ALAN F. BOWIN, CSR, RMR, CRR  
LORI A. SACCO  
Official Court Reporters

## 1 | APPAREANCE:

For the Plaintiffs:

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5 800 THIRD AVENUE  
BY: NEW YORK, NEW YORK 10022  
BY: JEROME H. BLOCK, ESQ.

- and -

8 MAUNE RAICHLE HARTLEY FRENCH & MUDD, LLC  
150 WEST 30TH STREET  
9 NEW YORK, NEW YORK 10001  
10 BY: SUZANNE M. RATCLIFFE, ESQ.  
CHRISTIAN HARTLEY, ESQ.  
MARGARET SAMADI, ESQ.

12 For the Defendants:

14 PATERSON BELKNAP WEBB & TYLER, LLP  
1133 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036  
15 BY: THOMAS P. KURLAND, ESO.

-and-

17 KIRKLAND & ELLIS, LLP  
18 300 NORTH LaSALLE STREET  
19 CHICAGO, IL 60654  
BY: MIKE BROCK, ESQ.  
STACEY GARRIS PAGONIS, ESQ.

## RULINGS

1 test report is hearsay. And as defendants argue, that  
2 experts on each side discussed the merits of the report,  
3 does not transform it into an admissible document. This is  
4 especially true because the experts testimony is reasonably  
5 read as limited to the question of how the report did or did  
6 not effect their expert opinions. In other words, the  
7 experts treated the test report as basis evidence and did  
8 not thereby render it admissible for truth as evidence in  
9 chief.

10 Plaintiffs also seek the admission of an  
11 interrogatory response from another case involving Johnson &  
12 Johnson. But plaintiffs have not established that the  
13 nature and context of the prior litigation was sufficiently  
14 similar to this case to make it admissible under CPLR 3117.  
15 Plaintiffs seek production of a report prepared by Dr. Alice  
16 Blount, B-L-O-U-N-T, previously withheld by defendants as  
17 work product. Plaintiffs argue that the document is neither  
18 privilege -- Let me try that again. Plaintiffs argue that  
19 the document is either not privileged or that the privilege  
20 has been waived.

21 The Court has reviewed the document in-camera and  
22 concludes that defendants are entitled to withhold it. On  
23 its face the document is prepared by an expert serving  
24 informally as a scientific consultant to a party, providing  
25 information that may be relevant to legal arguments and

1 strategy. Although this is a borderline determination by  
2 the Court, the Court finds the contents of the report  
3 relevant to legal arguments and strategy just barely but it  
4 falls within that work product. It qualifies as work  
5 product under the Court's decisions in Hudson Insurance v.  
6 Oppenheim, 72 A.D.3d 489, 490 that's a 2010 decision and  
7 Santariga, S-A-N-T-A-R-I-G-A versus McCann, M-C capital  
8 C-A-N-N, 161 AD2d 320, 321, and that's a 1990 decision.

9 (Continue on the next page.)

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## Proceedings

1                   THE COURT: Plaintiffs argue that any privilege  
2 about this document has been waived by the production of  
3 other closely related documents, but unlike the  
4 attorney-client privilege, questions of waiver with respect  
5 to work product must be considered document by document.  
6 Waiver as to one document does not waive work product  
7 privilege of other documents.

8                   So defendants remain entitled to withhold the  
9 document as privileged.

10                  And I think that covers everything.

11                  MR. BLOCK: Thank you, your Honor.

12                  MS. PAGONIS: Thank you, your Honor.

13                  MR. HARTLEY: Thank you, your Honor.

14                  MR. KURLAND: You're not going to rule on our  
15 directed verdict motion?

16                  THE COURT: Oh, I'm sorry.

17                  Decision reserved.

18                  However, the Court is granting a directed verdict  
19 on the two causes of action that you referred to. One is  
20 the manufacturer and the other is the breach of the implied  
21 warranty.

22                  MR. BLOCK: Excuse me.

23                  For lack of opposition on those two claims; right,  
24 your Honor? Those were the two that we did not put in  
25 opposition on.